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January 10, 2012

Board of Appeals  
Town of Acton  
482 Main St.  
Acton, MA 01720

Re: Board of Appeals Hearing #12-01, Petition for Review, Walker Realty and Next Generation, January 11, 2012

Members of the Board of Appeals:

Due to a prior commitment, I will be unable to attend your hearing on the above referenced matter on Wednesday evening, but I hope you will make this letter part of the hearing record and please give it due consideration.

I urge you to uphold the decision of the Zoning Enforcement Officer's denial of the most recent plan submitted by Walker Realty on behalf of Next Generation Children's Center. This plan is no different and in fact more detrimental to the community than the prior plan that Walker submitted on behalf of Next Generation back in 2009. The only significant change is that the lot area is being combined with the adjoining property, formerly the Kennedy nursery and landscaping businesses. In fact it is my understanding that there are serious questions regarding the ability of Kennedy to alter both its nursery and landscaping uses on the existing site which I discuss later.

The most significant issue is that the expansion of the lot size does not cure the fundamental problem of this proposal: it is far outside the maximum net floor area, provides insufficient open space, creates a major threat to public safety, and is not in keeping with the character of the town, particularly given that this *commercial* operation is situated in the R-2 *residential* zoning district. The proposed site is not close to any commercial uses and now encroaches even more on a residential neighborhood marked by relatively small lots and small homes. As with the prior proposal, Next Generation should not be allowed to build a "factory-size" child care facility within the confines of a residential neighborhood. Our zoning is clear; we allow child care facilities in residential districts only where such facilities are consistent with the size and dimensional features of the surrounding neighborhood. This proposal fails to meet that test.

The Zoning Enforcement Officer's denial lists several reasons for denying the project. The first two are critically important and should be the basis for upholding his finding. First, the town recently amended its zoning bylaw to permit a child care facility in a residential district to be no larger than 2,500 sq. ft. The Next Generation proposal is almost nine times that size at

21,290 sq. ft.<sup>1</sup> In June 2009 the town amended its zoning bylaw with regard to the permitted size for Child Care facilities in residential districts. As a direct result of the initial Next Generation proposal as well as this Board's ruling in that matter, the town determined that its prior size limitation of only 1,000 sq. ft. was insufficient. Through careful analysis, review of case law, and study of information regarding the size of other child care facilities in town as well as residential buildings, the dimensional regulations for child care facilities were changed to increase the allowed maximum net floor area to 2,500 sq. ft. in R-2 districts and up to 5,000 sq. ft. in R-10 districts. As was demonstrated at the Town Meeting presentation, the maximum size of 2,500 sq. ft. in the R-2 district is reasonable and is intended specifically to accommodate stand-alone child care facilities in residential zoning districts while also maintaining a reasonable and proportionate relationship to the residential buildings in those zoning districts. To permit the construction of a child care center that is almost nine times the allowed size would result in a development that is totally out of character with the surrounding neighborhood and would defeat the purpose of the amended by-law.

The proponent relies heavily on the ZBA's language in its prior decision when the Board found that the 1,000 sq. ft. limitation was unreasonable and unduly restrictive. Such reliance on the Board's prior decision is a red herring as the Zoning By-Law was changed specifically in order to cure this problem. While 1,000 sq. ft. might be considered overly restrictive, 2,500 sq. ft. in the R-2 zoning district is entirely reasonable. The presentation at the June 2009 Town Meeting demonstrated this point clearly when it showed that median net floor area of residential buildings in the R-2 district is between 2,000 and 2,500 sq. ft. Furthermore, the presentation showed that the size of other day care centers in town are generally less than 2,500 sq. ft. and those that are in residential districts do not exceed 2,500 sq. ft. Thus, this new size limitation is entirely reasonable and in keeping with the character and size of buildings in our residential neighborhoods. The amended bylaw was specifically designed not to overly limit the citing of a day care facility in a residential district while protecting the residential character of the area. This clearly meets the legal test of being related to a legitimate municipal concern.<sup>2</sup>

The second basis for the denial is the failure of the proposal to provide sufficient open space. Our zoning by-law requires a minimum of 35% open space outdoor excluding play areas and excluding perimeter landscaping. Again this requirement is to ensure that the child care center fit into the character of the residential area. This plan provides *less* than 30% open space and even some of that is provided in arguably very creative ways. Again the plain fact is that the proposal does not meet our zoning by-law which is sufficient grounds for denial and that denial should be upheld by this Board as the requirement is fair and reasonable.

Although the Zoning Officer did not make a finding regarding the number of parking spaces, it appears that the proposal also violates the maximum number of parking spaces allowed per our amended zoning by law. The bylaw states that a minimum of one space per 10 children plus one space per each staff person on the largest shift is the *maximum* allowed number of

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<sup>1</sup> The net area shown on the plan is smaller, however, it appears to exclude bathrooms, which I believe should be included in the net floor area calculation.

<sup>2</sup> Indeed the proponent is free to build a facility of this size in a non-residential district, or to build a 2,500 sq. ft. facility at the present location. Such a facility would be on the same scale as all other such facilities in town.

parking spaces. The Center is intending to house 262 children and the plan shows 64 staff people at peak for a maximum of 90 spaces, yet the plan shows 91 spaces in excess of the maximum number of spaces. Furthermore, there is no supporting data to show the basis for the 64 staff people at peak time. This seems extremely high and represents a very high proportion of staff to children. The Board should request additional information to justify this figure.

Of even greater concern are the general public safety and traffic issues relating to this plan. The revised plan shows the child care center located much closer to the Public Safety facility than the prior plan. Traffic along Main St. is already highly congested, particularly at rush hours, the same time when families would be delivering and picking up their children at the proposed site. The potential for backups onto Route 2 as well as gridlock on Route 27 and the Hayward Road intersection are extremely likely. The potential to block the entrance and exit from the Public Safety facility is also highly likely which could have catastrophic effects for emergency response.

The proposal does not provide a traffic study or even an update to the prior study, but baseline traffic continues to get worse. I travel by this lot every day between 7:15 and 7:30 am and traffic exiting Route 2 east heading onto Main St is routinely backed up, at times onto Route 2 itself. Adding another 150 cars or more at this time of day is simply asking for a disaster. In addition, this proposal would negatively impact the schools' transportation operation and cause further delays in delivering children to the public schools and also raises other public safety issues including pedestrian safety. These schools including the regional campus and the Twin Schools are located near the proposed site where over 4,000 students and 400 teachers and staff must come and go at approximately the same time as the peak drop off and pick up times would be for Next Generation. This proposal will exacerbate an already bad traffic situation because the proposed child care center is simply much too large. It does not require much imagination to visualize the traffic issues at this location between 7 and 9 am when 260 families deliver their children (not to mention 60 or more teachers and administrators), while many town citizens are entering Route 2 to go to work, and school buses traverse this location to get children to school.

A final issue with this proposal is that although Kennedy's nursery business is exempted as an agricultural use, the same cannot be said for its landscaping business and it was only through a grandfathering arrangement that the landscaping business has been allowed to continue to operate. With its change in location, the landscaping business cannot be permitted to continue to operate as in the past. This issue should be explored further by the Board and Kennedy must be made aware of this fact. If he is not allowed to operate the landscaping business, he may decide not to sell his property to Walker. The plan also provides no details regarding the Kennedy nursery and landscaping business uses. Currently, the businesses utilize space directly across the street on the east side of Main St. and there is already concern regarding workers and customers walking across a very busy street. No crosswalk or other safety measures are shown on the plan. With the proposed relocation of the Kennedy businesses to the south, the movement across the street will be further exacerbated, causing significant safety concerns for workers and customers.

Last spring at Town Meeting the town voted virtually unanimously to support a resolution that expressed opposition to Next Generation coming to Acton at 352 Main St. Last

night the Selectmen voted to oppose this project, expressing a willingness to continue to litigate, and town staff has provided comments indicating significant problems with this proposal. No one in Acton wants this day care facility at this location. I urge the Board to uphold the Zoning Enforcement Officer's decision. This is clearly within the Board's authority to enforce reasonable regulations concerning the bulk and height of structures. Our Zoning By-Laws, particularly the changes that were made at the June 2009 special Town Meeting are reasonable regulations that are not unduly restrictive and protect legitimate municipal concerns.

Very truly yours,

*Peter K. Ashton*

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